

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

**CYNTHIA FISHER; ESTHER “FAYE”
PAYTON; EDWARD WILLIAMS;
MACEDONIA MISSIONARY BAPTIST
CHURCH; ROBERT ZELLNER; *and*
FRANCELIA CLAIBORNE,** **PLAINTIFFS**

v. **CIVIL ACTION NO. 1:23-cv-265-TBM-RPM**
CITY OF OCEAN SPRINGS, MISSISSIPPI, **DEFENDANT**

ORDER

This matter came before the Court on the Motion to Dismiss [12] filed by Defendant City of Ocean Springs on November 2, 2023, in response to the Plaintiffs’ original Complaint [1] filed on October 12, 2023. Pursuant to Plaintiffs’ Amended Complaint [17] filed on November 27, 2023, the Court finds that the City of Ocean Springs’ Motion to Dismiss [12] is MOOT. However, the City of Ocean Springs’ Motion to Dismiss [18] in response to the Plaintiffs’ Amended Complaint [17] is not MOOT.

The Amended Complaint [17] renders the original complaint [1] of no legal effect because the Amended Complaint does not refer to, adopt, or incorporate by reference the original Complaint. *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994) (finding that an amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading.”).

Therefore, the pending Motion to Dismiss [12] is moot. *See New Orleans Association of Cemetery Tour Guides and Companies v. New Orleans Archdiocesan Cemeteries*, 56 F.4th 1026, 1034 (5th Cir. 2023) (“Because the first amended complaint is nullified, we cannot consider—and thus must dismiss—an appeal . . . stemming from said complaint.”).

IT IS THEREFORE ORDERED AND ADJUDGED that the City of Ocean Springs’ Motion to Dismiss [12] is MOOT.

IT IS FURTHER ORDERED AND ADJUDGED that the City of Ocean Springs’ Motion to Dismiss [18] is not MOOT.

This, the 28th day of December, 2023.


TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE